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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 MICHELLE RENEE HUGHES,

8 Petitioner,

9 v.

10 UNITED STATES OF AMERICA,

11 Respondent.
12

Case No. C21-1368RSM

ORDER DENYING PETITIONER'S
MOTION UNDER 28 U.S.C. § 2255

13 **I. INTRODUCTION**

14 Before the Court is Petitioner's § 2255 Motion to Vacate, Set Aside, or Correct
15 Sentence. Dkt. #1. Michelle Renee Hughes challenges the 52-month sentence imposed on her
16 by this Court following her guilty plea for eight counts including mail fraud, making false
17 statements, and aggravated identity theft. *Id.* at 1; Case No. 2:19-cr-00124-RSM, Dkts. #12,
18 #46. Petitioner asserts what appear to be ineffective-assistance-of-counsel claims and claims
19 that her fraudulent acts were lawful. After full consideration of the record, and for the reasons
20 set forth below, the Court DENIES this § 2255 Motion.
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22 **II. BACKGROUND**
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24 The Court generally agrees with the relevant background facts as set forth by the
25 Government and demonstrated by court records. *See* Dkt. #5 at 2–8. Ms. Hughes has failed to
26 file a reply brief and therefore does not dispute this largely procedural background. The Court
27 will attempt to focus only on those facts necessary for a ruling.
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1 Ms. Hughes was involved in forging signatures and defrauding individuals into
2 purchasing two aircraft in 2019 that legally belonged to third parties. Law enforcement posed
3 as buyers for the aircraft in an undercover operation and arrested Ms. Hughes on June 13, 2019.

4 The Government initially charged Ms. Hughes by Complaint with two counts of false
5 statements and two counts of aggravated identity theft. Case No. 2:19-cr-00124-RSM, Dkt. #1.
6 Although the Government sought pretrial detention, Ms. Hughes was released on bond. Case
7 No. 2:19-cr-00124-RSM, Dkt. #10. The grand jury in June 2019 returned an eight-count
8 indictment. Counts One and Two charged Ms. Hughes with mail fraud, in violation of 18
9 U.S.C. § 1341. Counts Three through Six charged her with false statements, in violation of 18
10 U.S.C. § 1001. Counts Seven and Eight charged her with Aggravated Identity Theft, in
11 violation of 18 U.S.C. § 1028A. Case No. 2:19-cr-00124-RSM, Dkt. #12.
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13 Ms. Hughes violated her pretrial bond by attempting to flee the country at the U.S.-
14 Canada border and her bond was revoked. Case No. 2:19-cr-00124-RSM, Dkts. #37 and #46.
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16 Ms. Hughes filed no pretrial motions. On April 30, 2020, she pleaded guilty to all eight
17 counts. Case No. 2:19-cr-00124-RSM, Dkt. #47. At the change-of-plea hearing, after being
18 placed under oath, Ms. Hughes confirmed that she had previously entered guilty pleas and had
19 reviewed the plea agreement with trial counsel. Case No. 2:19-cr-00124-RSM, Dkt. #68 at 3, 5.
20 The Court then went through the elements of each crime listed in the indictment, confirming
21 Ms. Hughes understood all the elements required to establish her guilt. *Id.* at 5-8. The Court
22 went over, in detail, each right Ms. Hughes was giving up by pleading guilty, including the
23 right to persist in a non-guilty plea. *Id.* at 11-12. When asked if she understood these rights,
24 Ms. Hughes said, “Yes, I do.” *Id.* at 12. The Court read the plea agreement’s factual statement
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1 verbatim into the record and asked Ms. Hughes “is this what happened” and she replied in the
2 affirmative. *Id.* at 20.

3 Ms. Hughes’ sentencing memorandum appears to credibly admit guilt and remorse for
4 what she did in this case. *See* Case No. 2:19-cr-00124-RSM, Dkt. #57. She apologized for her
5 actions at the sentencing hearing.

6
7 The Court calculated Ms. Hughes’ Sentencing Guidelines range as 37 to 46 months
8 based on a total offense level of 20 and a criminal history category of II. Case No. 2:19-cr-
9 00124-RSM, Dkt. #69 at 13. The Court noted that Counts Seven and Eight carried a
10 mandatory-minimum sentence of 24 months, required by statute to run consecutive to any other
11 sentence imposed. *Id.* The Court adopted the joint recommendation of the parties, granted Ms.
12 Hughes full credit for acceptance of responsibility, and imposed a below-Guidelines prison
13 sentence of 28 months on counts One through Six, and 24 months on Counts Seven and Eight,
14 to be run consecutive, for a total of 52 months’ imprisonment. *Id.*

15
16 Ms. Hughes filed a notice of appeal and was assigned appellate counsel. Case No. 2:19-
17 cr-00124-RSM, Dkt. #62, #67. In May 2021, while represented by counsel, Ms. Hughes
18 moved under Federal Rule of Appellate Procedure 42(b) and Ninth Circuit Rule 27-9 to dismiss
19 her own appeal. Case No. 20-30262, Dkt. #14-1 (9th Cir. May 16, 2021). Ms. Hughes’ counsel
20 confirmed to the Ninth Circuit that “[t]his motion is made with the consent of appellant
21 Michelle Renee Hughes.” *Id.* at 1. Ms. Hughes submitted a signed letter to the Ninth Circuit
22 “verify[ing] that I consent to the voluntary dismissal of my direct appeal” and confirming that
23 “I have been advised by my counsel that I have a constitutional right to a direct appeal”; that
24 “[m]y counsel also advised me regarding the effects of voluntarily dismissing my direct
25 appeal”; that “I understand that I am giving up my constitutional right to a direct appeal”; and
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1 that “this letter will serve as an exhibit to” the motion. Case No. 20-30262, Dkt. #14-2 (9th Cir.
2 May 16, 2021). The Ninth Circuit granted Ms. Hughes’ unopposed motion and dismissed the
3 appeal.

4 Ms. Hughes filed this instant petition pro se on October 6, 2021. Dkt. #1. She requests
5 release from prison, financial compensation, return of property “including aircrafts,” and
6 cancelation of court cost and restitution. *Id.* at 12.

8 Ms. Hughes asserts three grounds for relief—one for each category of charge. For
9 Ground One, she challenges her two mail-fraud convictions, Counts One and Two, by claiming
10 that “[t]he forms said to claim abandoned property you must mail the forms only. To claim the
11 property you must mail the paperwork to the FAA in Oklahoma City, Oklahoma. You could
12 not appear in person.” *Id.* at 5. Ms. Hughes then alleges that “[m]y attorney never filed any
13 motions that she claimed. She never investigated my evidence. I was prosecuted based on my
14 poverty status.” *Id.* For Ground Two, Ms. Hughes challenges her four false-statement
15 convictions, Counts Three through Six, by claiming that she:
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18 was following instructions according to the Owners Manual. I have
19 the legal right to claim the aircraft. Aircrafts [sic] was abandoned
20 because owners refusal to renew ownership of Aircraft. The
21 Aircrafts [sic] was abandoned for at least 6 months. If the owners
22 could not front the \$10 for renewal then how did they have tens of
23 thousands of dollars for a private attorney. They were using the
24 aircrafts for illegal activities. It is unjust. When will I ever receive
25 justice for false i[m]prisonment. How can it be a false statement if
26 it tells you what to put down on forms.

27 *Id.* at 6. Ms. Hughes again repeats her claim that “[m]y attorney never filed any motions that
28 she claimed.” *Id.* For Ground Three, Ms. Hughes challenges her two aggravated identity theft
convictions, Counts Seven and Eight, by claiming that “I was following instructions on the
forms. The owners manual claimed that I had to sign the previous owners names. It said it on

1 page 94 or 95, in the very first sentence.” *Id.* at 8. Ms. Hughes again claimed that “my
2 attorney never filed any motions that she claimed.” In her filing, Ms. Hughes fails to support
3 her assertions with record citations, exhibits, a declaration, or any other evidence. She has not
4 requested an evidentiary hearing or discovery.

5 6 **III. DISCUSSION**

7 **A. Legal Standard**

8 A motion under 28 U.S.C. § 2255 permits a federal prisoner in custody to collaterally
9 challenge her sentence on the grounds that it was imposed in violation of the Constitution or
10 laws of the United States, or that the Court lacked jurisdiction to impose the sentence or that the
11 sentence exceeded the maximum authorized by law.

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13 A petitioner seeking relief under Section 2255 must file her motion with the one-year
14 statute of limitations set forth in § 2255(f).

15 A claim may not be raised in a Section 2255 motion if the defendant had a full
16 opportunity to be heard on the claim during the trial phase and on direct appeal. *See Massaro*
17 *v. United States*, 123 S. Ct. 1690, 1693 (2003). Where a defendant fails to raise an issue before
18 the trial court, or presents the claim but then abandons it, and fails to include it on direct appeal,
19 the issue is deemed “defaulted” and may not be raised under Section 2255 except under
20 unusual circumstances. *Bousley v. United States*, 523 U.S. 614, 622 (1998); *see also United*
21 *States v. Braswell*, 501 F.3d 1147, 1149 & n.1 (9th Cir. 2007). Unless the petitioner can
22 overcome this procedural default, the Court cannot reach the merits of his claims. *See Bousley*,
23 523 U.S. at 622. To do so, the petitioner must “show both (1) ‘cause’ excusing his double
24 procedural default, and (2) ‘actual prejudice’ resulting from the errors of which he complains.”
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1 *United States v. Frady*, 456 U.S. 152, 168 (1982).¹ To demonstrate “cause” for procedural
2 default, a defendant generally must show that “some objective factor external to the defense”
3 impeded his adherence to a procedural rule. *Murray*, 477 U.S. at 488. *See also United States v.*
4 *Skurdal*, 341 F.3d 921, 925 (9th Cir. 2003). The Supreme Court has held that “cause” for
5 failure to raise an issue exists “where a constitutional claim is so novel that its legal basis is not
6 reasonably available to counsel.” *Reed v. Ross*, 468 U.S. 1, 16 (1984). The “prejudice” prong
7 of the test requires demonstrating “not merely that the errors at . . . trial created a possibility of
8 prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire
9 trial with error of constitutional dimensions.” *Frady*, 456 at 170.

11 **B. Analysis**

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13 There is no dispute that Ms. Hughes meets the “custody” requirement of the statute and
14 that this is Motion is timely under § 2255(f). This is not a second or successive petition.

15 The Government first argues that all of Ms. Hughes’ claims, except for her ineffective
16 assistance claims, are barred by the collateral-review waiver in her plea agreement. Dkt. #5 at
17 10 (citing, *inter alia*, *United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993); *United*
18 *States v. Goodall*, 15 F.4th 987, 993-97 (9th Cir. 2021)). The Court agrees. The Court’s
19 colloquy with Ms. Hughes at the change-of-plea hearing confirmed she understood her decision
20 to waive her appellate and collateral-review rights. Because she does not dispute that her “plea
21 agreement as a whole was knowingly and voluntarily made,” any freestanding innocence
22 claims in her § 2255 motion are barred by the explicit terms of her collateral-review waiver.
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25 *United States v. Jeronimo*, 398 F.3d 1149, 1154 (9th Cir. 2005).

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28 ¹ Another means by which procedural default may be excused is by establishing actual innocence. *See Bousley*,
523 U.S. at 622.

1 Ms. Hughes' claims of innocence are foreclosed by the guilty plea for the reasons stated
2 in Government briefing, even if there had not been a waiver. Dkt. #5 at 11.

3 All of Ms. Hughes' claims, except for her ineffective assistance claims, are also
4 procedurally defaulted given Ms. Hughes' failure to raise them on direct appeal. She has failed
5 to demonstrate sufficient cause for the default or to present any evidence that she is actually
6 innocent of these offenses.
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8 This just leaves Ms. Hughes' ineffective assistance of counsel claims.

9 Ineffective-assistance claims may be brought on collateral review even if not raised on
10 direct appeal. *Massaro v. United States*, 538 U.S. 500, 504 (2003). The standards to be applied
11 to ineffective assistance claims are those defined in *Strickland v. Washington*, 466 U.S. 668
12 (1984). Such a claim has two components: inadequate performance by counsel, and prejudice
13 resulting from that inadequate performance. To prevail, a defendant first must show that "in
14 light of all the circumstances, the identified acts or omissions were outside the wide range of
15 professionally competent assistance." *Strickland*, 466 U.S. at 690. "This requires showing that
16 counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the
17 defendant by the Sixth Amendment." *Id.* at 687. However, "[a] fair assessment of attorney
18 performance requires that every effort be made to eliminate the distorting effects of hindsight,
19 to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct
20 from counsel's perspective at the time." *Id.* at 688 (citation omitted). The presumption is that
21 counsel was competent. *Id.* Even if the first part of the *Strickland* test is satisfied, a defendant
22 is not entitled to relief unless he can show prejudice. *Id.* at 687. A defendant "must show that
23 there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty
24 and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).
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1 Ms. Hughes has failed to show that her counsel committed any error, and thus she has
2 failed to show that she would not have pleaded guilty or that her counsel otherwise “made
3 errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by
4 the Sixth Amendment.” *Strickland* at 687. She offers no details as to the motions that should
5 have been filed by counsel, or the evidence that her counsel failed to investigate. She makes
6 only conclusory arguments as to these points. She has failed to file a reply brief addressing the
7 Government’s valid points on these issues.
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9 C. Certificate of Appealability

10 A petitioner seeking post-conviction relief under § 2255 may appeal this Court’s
11 dismissal of his petition only after obtaining a Certificate of Appealability (“COA”) from a
12 district or circuit judge. A COA may issue only where a petitioner has made “a substantial
13 showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(3). A petitioner
14 satisfies this standard “by demonstrating that jurists of reason could disagree with the district
15 court’s resolution of [her] constitutional claims or that jurists could conclude the issues
16 presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*,
17 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). The Court finds that the law
18 above is clear and there is no basis to issue a COA.
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21 IV. CONCLUSION

22 Having considered Petitioner’s motion, Respondent’s answer thereto, and the remainder
23 of the record, the Court hereby finds and ORDERS:
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- 25 1. Petitioner’s Motion under § 2255 (Dkt. #1) is DENIED. No COA shall be issued.
- 26 2. This matter is now CLOSED.
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1 3. The Clerk of the Court is directed to forward a copy of this Order to Petitioner and
2 all counsel of record.

3 DATED this 5th day of October, 2022.
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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE
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